

February 14, 2023

VIA CM/ECF

Hon. Sarah L. Cave
United States Magistrate Judge
Southern District of New York
500 Pearl Street, Courtroom 18A
New York, New York 10007

**RE: Flynn v. Cable News Network, Inc.
Case 1:21-cv-02587 (GHW/SLC)**

Dear Judge Cave:

I represent Plaintiffs, John P. “Jack” Flynn and Leslie A. Flynn (the “Flynnns”) in this matter and Valerie Flynn and Lori Flynn in the companion cases pending in the Middle District of Florida. This letter responds to Defendant Cable News Network, Inc.’s (“CNN”) February 9, 2023 letter motion.

The CNN report at issue in this action is a fake news grift. In February 2021, CNN used the Flynnns’ images together with the scandalous accusation that the Flynnns were QAnon followers in a misguided attempt to raise ratings. CNN had no evidence then, and it has no evidence now that the Flynnns are or ever were QAnon followers. In the total absence of evidence, CNN has adopted a discovery strategy of distraction and obfuscation.

To date:

- The Flynnns produced massive data/files for all social media accounts, and provided notarized consents and signed Stored Communications Act releases that allowed CNN to obtain all data/information from Parler and Twitter;
- Using a four-page list of Search Terms, counsel for the Flynnns personally searched the Flynnns’ email accounts and supplemented the Flynnns’ disclosures and responses to requests for production of documents in accordance with Rule 26(e)(1)(A);
- The Flynnns supplemented their disclosures and discovery responses in a timely manner when they learned that in some material respect the disclosures or responses were incomplete;¹

¹ For instance, when counsel for CNN indicated that Sidney Powell had produced an email [REDACTED], but the Flynnns had not produced a copy of the same document, counsel for the Flynnns ran another search, located and produced a copy of the email (PX 1436-1439).

- The Flynns produced to CNN a list of phone numbers for which text messages have been searched and to which of the Flynns the numbers belong;
- The Flynns personally searched all cell phones using the Search Terms, and they have produced all responsive documents in accordance with Rule 26(e)(1)(A).

CNN's February 9, 2023 letter contains multiple falsehoods and material omissions, illustrating its increasing desperation:

1. **Tracy Diaz Texts**

On June 19, 2022, the Flynns produced all text message communications between Jack Flynn, Joe Flynn and Tracy Diaz (PX 113-134).

On December 2, 2022, CNN produced copies of documents it obtained in response to a subpoena issued to Tracy Diaz.

In its February 9, 2023 letter motion, CNN represents that “[o]nly after CNN brought these documents to Plaintiffs’ counsel’s attention did Plaintiffs suddenly find and produce those documents”. (Emphasis added).

This is plainly inaccurate.

On January 25, 2023, after counsel for the Flynns corrected the record, CNN asked the Flynns to “reproduce [PX 126-127 and PX 132-133] so that for the entirety of the text messages, the top of each continuous screenshot includes the last text message from the former screenshot, so that we can ensure that the entirety of the text messages have been produced.”

On January 28, 2023, the Flynns reproduced the Diaz texts in the form requested by CNN (PX 1514-1519).

2. **Signal**

There were no conversations between Jack Flynn and Lori Flynn using Signal. Signal was not used by the Flynns to communicate “about this litigation”. There is nothing to search. There are no messages to produce.

In June 2022, Jack Flynn produced a March 15, 2021 text message he sent to “[REDACTED]” (PX 084). CNN first inquired about the phone number [REDACTED] on January 25, 2023. On January 28, 2023, the Flynns advised CNN that the phone number belonged to Lori Flynn at the time. The Flynns further advised that the number was not searched because Lori Flynn “does not possess the phone. It has not been her number for almost 2 years.”

PX 084 indicates that [REDACTED]. Jack Flynn searched his Signal app, and found no indication that he ever received the information.

3. **WhatsApp and Telegram**

Rule 26(b)(1) expressly states that parties may obtain discovery regarding “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case”.

The Flynn’s use of WhatsApp and Telegram is wholly unrelated to this case. Jack Flynn used WhatsApp for business and purely personal purposes, and has infrequently used the service since he sold his seafood business in October 2020. Jack uses Telegram to “like” comments General Flynn might have made on his public Telegram channel and Leslie Flynn has used WhatsApp and Snapchat to like (heart emoji) photos from family members. Valerie Flynn has not used any messaging services. Joe Flynn has used WhatsApp regarding international business investments unrelated to any issue in this case, and Telegram to read posts by General Flynn. Lori Flynn used WhatsApp when she and General Flynn went to Korea a few years ago. She uses Telegram (@LJFlynn) solely to look at posts by General Flynn and others. General Flynn’s telegram channel is public. [<https://t.me/s/RealGenFlynn>]. CNN can look at it anytime. CNN can run a search on any term.

Requiring counsel for the Flynn’s to search messaging apps for documents that do not exist or are public is not proportional to the needs of the case.

4. **Deleted/Missing Documents**

Finally, CNN misrepresents that there are “missing texts” between “Jack Flynn and others” and between “Jennifer Freitas, General Flynn, and Lori Flynn”, and a text between Joe Flynn and Tracy Diaz “using [REDACTED]”.

No text messages are missing. CNN has them all.

The short text exchange between Joe Flynn and Tracy Diaz in October 2020 (**TRACY DIAZ 136**) clearly and indisputably shows that [REDACTED].

Yours very truly,

/s/ Steven S. Biss

Steven S. Biss

cc. Anthony C. Carlini, Jr., Esq.